

ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Alan M. Berkun, Petitioner  
vs.  
DUKE TERRELL-WARDEN , Respondent

NO.

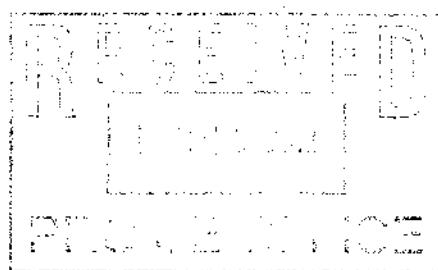
CV 12-000706

PETITION FOR WRIT  
OF HABEAS CORPUS

GREGORY J

PETITION FOR HABEAS CORPUS

1. The petitioner is now in the custody of Duke Terrell, Warden of the Metropolitan Detention Center, Federal Correction facility, under sentence for conviction of 18 USC 1956 h rendered by the United States District Court for the Eastern District.
2. Since petitioner's confinement began at the MDC Federal Correction facility, petitioner has been deprived of his constitutional rights in connection with Administrative Case number 642829-F1, in which petitioner was unconstitutionally barred from ordering a jigsaw puzzle via the mail from Amazon.com to the MDC facility.
3. Petitioner's constitutional rights were denied in connection with Administrative case number 642829 F-1 and the BOP's adjudication, in that Petitioner's First Amendment rights are being violated. The prison officials actions denying petitioner the right to order a jigsaw puzzle are not "reasonably related to legitimate penological interests" and violate the Supreme Court decision in Turner v. Safley, 482 US 78, 107 S.Ct. 2254, 96L.Ed. 2d 64 (1987). Petitioner will also submit within 30 days a Memorandum of Law as part of this filing in support of his motion which examines the Supreme Court's four prong test and application to the instant action.
4. Petitioner filed his BP-8 on 5-18-2011 and it was denied on 6-1-2011.(See Exhibit One as attached). On 6-4-2011 Petitioner filed his BP-9 to the Warden (See Exhibit Two, as attached ). On 6-23-2011 the request was denied (See Exhibit Three). Petitioner filed his BP-10 on 6-28-2011 and on 8-4-2011 his request was again denied.(See Exhibit Four). On 8-22-11 Petitioner filed his BP-11 and included proof of a second request to the facility for a puzzle {the basis of the denial in the BP-10}, (See Exhibit Five). More than 120 days have passed with no response from Washington D.C. ; which date is well beyond the 60 day response time the BOP is required to adjudicate any Form BP-11.
5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241. Petitioner has exhausted all appeals available to him under the BOP regulations and has no remedy other than this application for a writ of habeas corpus to correct the illegal and unconstitutional additional burdens added to his confinement.



Prayer

For all the reasons stated, petitioner prays that:

- A. This Court issue a writ of habeas corpus directed to Duke Terrell, respondent, commanding him to produce the body of the petitioner, Alan M. Berkun before this Court at a time and place to be specified in the writ;
- B. This Court conduct a hearing on the deprivation of the petitioner's constitutional rights set out in this petition, and, following the hearing;
- C. This Court rule in favor of Petitioner and order the BOP to allow Petitioner's family to order from Amazon.com a jigsaw puzzle for the benefit of petitioner's personal enjoyment and insure its delivery to him at his place of incarceration.

Dated: 2-7-12

Signed By: A M Berkun - Pro Se

Name: Alan M. Berkun  
Inmate Number 58618-053  
MDC Brooklyn  
PO Box 329002  
Brooklyn, NY 11232-9002  
Unit H-52

## **EXHIBIT 1**

BRO-1330.13B  
ATTACHMENT 1  
PAGE 1

INMATE REQUEST FOR INFORMAL RESOLUTION

see footnotes  
NAME ALAN BERKUN REG. NO. 58618-053  
UNIT H-52

Specific Issue Needing Resolution Approval of BP-A0331 "Authorization to receive package" for incoming puzzle from Amazon.com

\* Explain, in detail the issue: IN April I sent a copout to Ms. TURNER, then I spoke to A.W. at Mainline, then I sent 2nd copout to Ms. EASTERLING requesting written approval to receive a jigsaw puzzle in mail. The Program Statement does not prohibit this item, and other facilities allow it. I have waited more than 5 weeks with NO answer at all. I am entitled to a response and a written disapproval, if that be the case  
INMATE SIGNATURE A. M. Berkun DATE 5-18-2011

TO BE COMPLETED BY COUNSELOR

Date Received: 5/21/11

Action Taken: Sent email to Ms. Easterling and ms. Turner requesting a response. As per PSS800.16, sec 3.13 pg 24&25, the puzzle is not educational or legal therefore, it is not authorized. This response was provided by R&D on 6-1-11.

COUNSELOR SIGNATURE ER DATE 5/31/11

Footnotes

- \* Copout #1 - TURNER dated 4/25  
Copout #2 TURNER dated 5/5  
A.W - MAINLINE - 5/10  
EASTERLING Copout 1 - 5/10

No Response to all these requests!

## **EXHIBIT 2**

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: BERKUN ALAN M.      REG. NO. 58618-053      UNIT H-52      INSTITUTION MDC Brooklyn

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

Part A- INMATE REQUEST Approval by WARDEN to order a jigsaw puzzle from Amazon.com

2nd receive it to Housing Unit.

Program Statement 5800.16 dated 4-5-11, sec 313 states "all incoming inmate property packages must be authorized in advance, "unless otherwise approved under another Bureau policy," [emphasis added]. Program Statement 5370.11, dated 6-25-08, sec 3(A) states: "Recreation programs will be provided to keep inmates constructively occupied and to reduce idleness. To further that directive, inmates may obtain materials through (4) "other sources approved by the WARDEN". A puzzle does not present any safety or security issues and it will be delivered to the mail room from the publisher, similar to a book or magazine. A puzzle presents no additional staffing scrutiny for the mail room and enhances the 2005 directive! Other federal facilities allow them on a regular basis. I will donate the puzzle to MDC upon completion. I seek your direct, written approval to receive a jigsaw puzzle; [See BP-8 denial by RTR], do attached —

6-4-2011

SIGNATURE OF REQUESTER

DATE

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

CASE NUMBER: 642829-F1

ORIGINAL: RETURN TO INMATE

CASE NUMBER:

Part C- RECEIPT

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT:

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)

USP LVN



PRINTED ON RECYCLED PAPER

5370 6/25/0006

3. PROGRAM OBJECTIVES. The expected results of this program are:

a. Recreation programs will be provided to keep inmates constructively occupied and to reduce idleness.

b. The physical, emotional, and social well being of inmates will be enhanced.

c. Inmates will be encouraged and assisted to adopt healthy daily lifestyle traits through participation in physical fitness and health education programs.

d. The need for inmate medical treatment will be decreased.

progstat

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{a. Obtaining Materials. An inmate engaged in art or hobbycraft activities may obtain materials through:

(1) The institution art program (if one exists); (2) The commissary sales unit;

Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or

→ (4) Other sources approved by the Warden.

## **EXHIBIT 3**

Inmate Name: BERKIN, Alan  
Register Number: 58618-053  
Administrative Remedy No.: 642829-F1

This is in response to your Request for Administrative Remedy, received June 9, 2011, wherein you request approval to receive a jigsaw puzzle from Amazon.com. Specifically, you state puzzles do not present safety or security concerns and the puzzle would be delivered from the publisher to the mail room utilizing the same procedures as books and magazines. Additionally, you state you will donate the puzzle to the institution upon completion and other facilities allow them on a regular basis.

With reference to your request for administrative remedy be advised that in accordance with institutional rules and regulations jigsaw puzzles are not approved as inmate personal property at MDC Brooklyn. However, jigsaw puzzles are hobby craft items that can be provided by the Recreation Department at MDC Brooklyn upon request and approval.

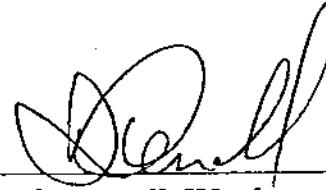
Specifically, Program Statement 5370.11, Recreation Programs, Inmate, indicates the art and hobby craft program enables inmates to make constructive use of their leisure hours and use their skills and creative abilities constructively. Moreover, Program Statement 5370.11 also indicates the use of hobby craft facilities is a privilege that may be granted or denied.

→ Accordingly, you may submit a Request to Staff to the Recreation Department requesting access to a jigsaw puzzle.

Based on the above requested information this is for informational purposes only.

If you are dissatisfied with this response, you may appeal to the Regional Director, Federal Bureau of Prisons, U.S. Custom House, 2<sup>nd</sup> and Chestnut Streets, Philadelphia, PA 19106, within 20 calendar days of the date of this response.

6/23/11  
Date

  
Duke Terrell, Warden

## **EXHIBIT 4**

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: ERRICKSON M  
LAST NAME, FIRST, MIDDLE INITIAL

5111 153

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UNIT

INSTITUTION

**Part A—REASON FOR APPEAL**

Part A-REASON FOR APPEAL VENUE: I appeal to the Supreme Court of India against the decision of the Hon'ble High Court of Madras in the Appeal No. 1234 of 1988, dated 10th October 1988, in which the said High Court has held that the suit filed by the plaintiff in the Civil Court at Madras against the defendant, the State of Tamil Nadu, was not maintainable as the defendant had not been given sufficient notice of the suit and the plaintiff had failed to prove that he had given sufficient notice to the defendant. The Hon'ble High Court has also held that the plaint was filed beyond the limitation period. The Hon'ble High Court has also held that the plaint was filed beyond the limitation period.

DATE

**SIGNATURE OF REQUESTER**

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**Part B=RESPONSE**

DATE

## **REGIONAL DIRECTOR**

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

THIRD COPY: WARDEN'S ADMINISTRATIVE REMEDY FILE

**CASE NUMBER:**

### **Part C--RECEIPT**

CASE NUMBER:

Return to: \_\_\_\_\_

REG. NO.

UNIT

## INSTITUTION

SUBJECT:

LAST NAME, FIRST, MIDDLE [INITIAL]

PRINTED ON RECYCLED PAPER

SIGNATURE, RECIPIENT OF REGIONAL APPEAL

BERKUN, Alan  
Reg. No. 58618-053  
Appeal No. 642829-R1  
Page One

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Part B - Response

You appeal the decision of the Warden at MDC Brooklyn and claim Recreation does not provide services to pretrial inmates and there are budgetary concerns preventing them from providing hobby craft classes. You specifically request to purchase personal jigsaw puzzles.

A review of your appeal reveals the Warden adequately responded to your complaint and you were denied permission to have a personal jigsaw puzzle. Any request to have a jigsaw puzzle was to be in writing to the Supervisor of Recreation. There is no documentation to show you submitted any such request. Accordingly, your appeal is denied.

If you are dissatisfied with this response, you may appeal to the General Counsel, Federal Bureau of Prisons. Your appeal must be received in the Administrative Remedy Section, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, within 30 calendar days of the date of this response.

Date: August 4, 2011

  
J. L. NORWOOD  
Regional Director

## **EXHIBIT 5**

BP-A148.055  
SEP 98

U. S. DEPARTMENT OF JUSTICE

## INMATE REQUEST TO STAFF CDFRM

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) <b>E. Knight - Recreation Dept Supervisor</b>	DATE: <b>6/28/2011</b>
FROM: <b>ALAN BERKUN</b>	REGISTER NO.: <b>58618-053</b>
WORK ASSIGNMENT: <b>WEST EDUCATION LIBRARY</b>	UNIT: <b>H-52</b>

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

*I am respectfully requesting that you order a jigsaw puzzle to the Recreation Department and allow me access to it.*

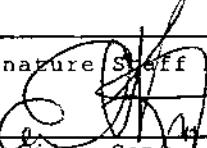
*Please read the BP-9 response dated 6-23-11, attached.*

*Thank you,  
A. Berkun*

(Do not write below this line)

DISPOSITION:

*The Recreation Dept. will procure Jigsaw Puzzles for inmate leisure time activities.*

Signature Staff Member 	Date <b>7/5/11</b>
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Record Copy - File; Copy - Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: Beebe ALAN M. LAST NAME, FIRST, MIDDLE INITIAL      REG. NO. 58618-053      UNIT H-52      INSTITUTION MDC Brooklyn

Part A - REASON FOR APPEAL DENIAL BY WARDEN FOR PERMISSION TO ORDER 1959W PUZZLES. I submitted my request to recreation Dept on 7-3-11 without any remedy. I seek amendment to the Program Statement which allows books and magazines. There is no additional "safety or security" burdens MDC Malroom in allowing a puzzle. The Warden and Region have failed to delineate any quantifiable reasons on why I cannot order a puzzle directly. MDC recreation provides no activities to pre-trial at all and is placating me by telling me they will "procure a puzzle". If and when it ever arrives I may be gone from the facility. It is a pyrrhic victory to pass the buck to the rec. dept!

8-21-11

DATE

SIGNATURE OF REQUESTER A M

Part B - RESPONSE

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: \_\_\_\_\_

Part C - RECEIPT

CASE NUMBER: \_\_\_\_\_

Return to: \_\_\_\_\_ LAST NAME, FIRST, MIDDLE INITIAL \_\_\_\_\_ REG. NO. \_\_\_\_\_ UNIT \_\_\_\_\_ INSTITUTION \_\_\_\_\_  
SUBJECT: \_\_\_\_\_

DATE

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL



